

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JULY 8, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:10a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Ron Agor

Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Ms. Charlene Unoki, Land
Mr. Mike Shinozuka, DOT

Mr. Sam Lemmo, OCCL

OTHER

Ms. Linda Chow, Deputy Attorney General
Ms. Lani Petrie, D-12
Mr. Walter Liew, D-20
Ms. Laura Inouye, D-6
Mr. Gerald Park, K-2

Mr. Gordon Cran, D-12
Mr. Louis Thomas Chang, D-10
Mr. Paul Sasaki, K-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of June 24, 2005

Member Schuman recused herself.

The Board made the following changes:

Page 11, Recommendation 9) last sentence

“ The applicant shall submit an NPDES application to the Office of Conservation and Coastal Lands [~~in satisfaction of~~] to satisfy this condition.”

Page 17, Approval of item E-1

**Approved as submitted (Inouye/Johns).
Member [~~Johns~~] Yamamura voted no.**

Approved as amended by the remaining Board members (Yamamura/Johns).

Item M-1: Fifth Amendment to Harbor Lease No. H-87-30 and Consent to Sublease under Harbor Lease No. H-87-30 Issued to the Hawaii Maritime Center situated at Pier 7, Waikahalulu, Honolulu Harbor, Oahu.

Unanimously approved as submitted (Johns/DeMello).

Item D-17: Withdrawal from General Lease No. S-4488, University of Hawaii, Lessee; Set Aside to Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management and Construction Right-of-Entry; Kalihi-Kai, Honolulu, Oahu, TMK: (1) 1-2-25: por.17.

Charlene Unoki, Assistant Administrator of the Land Division let it be known staff is seeking approval to withdraw approximately one (1) acre of land from GL4488 to be used by the Department of Transportation (DOT) as a container storage area. She is also requesting an immediate right-of-entry to DOT over the subject area. Ms. Unoki recommended the Board approve the withdrawal of approximately one acre from General Lease No. S-4488, approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation-Harbors Division and authorize the immediate issuance of a management and construction right-of-entry permit to the Department of Transportation-Harbors Division covering the subject area.

Unanimously approved as submitted (Johns/Yamamura).

Item D-12: Issuance of Revocable Permit to Kapapala Ranch, Ahulili and Kapapala, Kau, Hawaii; TMK: (3) 9-6-11:por. of 2 and 9-8-01:12 & por. of 11.

Ms. Unoki reminded the Board the subject land was former sugar can land leased by Kau Agribusiness. The applicant Kapapala Ranch is seeking a revocable permit for the area. Ms. Unoki pointed out the subject area includes both good land and bad land therefore staff is temporarily holding off with the issuance of a long-term lease for the area. Ms. Unoki recommended the Board authorize the issuance of a revocable permit to Kapapala Ranch covering the subject are for pasture purposes under the terms and conditions listed in staff's submittal.

Lani C. Petrie and Gordon Cran representing Kapapala Ranch were present.

Unanimously approved as submitted (DeMello/Johns).

Item D-20: Request for Extension of Notice of Default, General Lease No. S-4298, Walter Liew and Ann Liew, Lessees, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:03.

Ms. Unoki informed the Board the applicant was cited by the City and County of Honolulu for unauthorized structures at the subject agriculture zone parcel which included greenhouses, an office building, three dwelling units, a bonsai studio and a six foot chain-link fence. At present the applicant is working with the City and County of Honolulu to resolve these violations. The applicant has also been working with the Farm Service Agency to secure a loan, which will be used to facilitate the required actions to bring the property into total compliance. Ms. Unoki recommended the Board authorize the extension of the cure period of the Notice of Default to December 31, 2005, authorize the Chairperson to further extend the cure period beyond the December 31, 2005 for good cause and authorize the installation of a six foot chain-link fence on the property upon the lessee obtaining the appropriate permits from the City and County of Honolulu, Department of Planning and Permitting.

Walter Liew the applicant was present.

Unanimously approved as submitted (Johns/Yamamura).

Item D-10: Consent to Assign Homestead Lease No. 15, Joseph Ekau, Assignor, to Louis Chang, Assignee, Kaauhuhu Homesteads, North Kohala, Hawaii, TMK: (3) 5-5-01:18.

Ms. Unoki communicated the request before the Board is to allow fifty (50) percent of the interest in Homestead Lease No. 15 to be transferred. She also pointed out the request is for only fifty (50) percent of the interest as the other party that controls the other fifty (50) percent is unlocateable. Ms. Unoki recommended the Board consent to the assignment of an undivided 50% interest in Homestead Lease No. 15 from Joseph Ekau, as assignor, to Louis Chang, as assignee subject to the terms and conditions listed in the submittal.

Louis Thomas Chang of Cades Schutte was present.

Unanimously approved as submitted (DeMello/Johns).

Item D-6: Forfeiture of General Lease No. S-4308, Hilo Sheet Metal, Inc., Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58:02.

Ms. Unoki reminded the Board the forfeiture of the subject lease has appeared before the Board on four previous occasions. On June 9, 2005, ten days after the cure date of the most current notice of default expired, staff received the lessee's payment. A new notice of default

was sent out for the period covering April 23, 2005 to June 23, 2005, which the lessee paid on June 30, 2005. At present the lessee has made a payment on July 5, 2005 in the sum of \$3600 for advance payment of rent. Ms. Unoki made the Board aware of the fact that the lessee is subleasing a portion of the subject property for use as an acupuncture treatment center and has not received Board authorization. Based on the tenant's history, Ms. Unoki is recommending the Board authorize the cancellation of General Lease No. S-4308 as stated in staff's submittal.

Laura Inouye, representing Hilo Sheet Metal testified before the Board. She let it be known she has taken steps to ensure that future rent payments will be made on time as she has established an account with automatic withdrawals of the rent. Ms. Inouye took responsibility for the late payment of the rent. As far as subleasing the current property, Ms. Inouye let it be known that the acupuncture business on the property has been terminated.

Wendell Nunes, Vice President of Central Pacific Bank indicated the bank has a first mortgage leasehold on the property, which they were just made aware of by staff. At the time of the issuance of the first notice of default the bank was involved in a merger and this issue was overlooked. Mr. Nunes asked the Board not to cancel the lease.

Ms. Inouye indicated if they are able to, Hilo Sheet Metal could establish a line of credit in the event there would be insufficient funds in the account in which the rent payments were deducted from.

Mr. Nunes pointed out the mortgage securing the property is guaranteed by the Small Business Administration therefore Hilo Sheet Metal can be offered some assistance during this transition state.

The Board amended Recommendation Section to extend the cure period for an additional ten days. The applicant must secure a line of credit (submit documentation to the Land Division Office) equal to the quarterly payment within thirty (30) days of the Board's decision. If this condition is not complied with the lease will be cancelled automatically without returning to the Board.

**Approved as amended (DeMello/Yamamura).
Member Johns voted No.**

Item K-1: Request to Extend the Processing Period Ninety Days to Allow Constance, Jason and Kaulana Irons to File Conservation District Use Application.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) reminded the Board in February 2005 they found the Iron's to be in violation of Conservation District rules by failing to receive approvals for an unauthorized construction of a second single family residence and unpermitted improvements to the main single family residence. The Iron's were fined \$5,000 and were subject to twelve terms and conditions. Condition 10 noted that the landowner shall submit a conservation district use application (CDUA) for the after-the-fact improvements within six (6) months of the Board's action. At this time Mr.

Vitousek, the Iron's attorney is requesting a ninety-day time extension to comply with this condition. Mr. Lemmo let it be known the Department is currently processing a petition for an amendment to the rule, which will provide an exemption to the minimum lot size. At present the Department has received approval from the Governor to proceed with public hearings on Kauai on July 26. If the petition were to be accepted by the Board the Irons would be permitted to file a conservation district use permit. Mr. Lemmo noted he believes the permit process should take about three months. Mr. Lemmo recommended the Board approve the request to extend the processing period to file CDUA for the after-the-fact improvements an additional 90-days until November 11, 2005.

Paul Sasaki, attorney from the firm Cades and Schutte, representing the Iron's let it be known it is his belief that the Iron's will be removing the kitchen and joining together the two existing structures which area's total will be under the 3500 square foot requirement.

The Board amended the Recommendation as follows

“That the Board of Land and Natural Resources approve the request to extend the processing period to file CDUA for the after-the-fact improvements an additional [90] 180-days [~~until November 11, 2005~~].

Unanimously approved as amended (Agor/Johns).

Item D-15: Forfeiture of General Lease No. S-4272, Michael Milner, Lessee, Makawao, Maui, TMK: (2) 2-7-08:15.

Ms. Unoki disclosed that the lessee, Michael Milner lease is being terminated due to his failure to post the required performance bond. Ms. Unoki indicated this is the first time the lessee has appeared on the Board's agenda. Furthermore she notes that the lessee has supplied the Department with a letter from Bank of Hawaii indicating he has deposited the monies required in lieu of the performance bond.

Motion to withdraw

Unanimously approved to withdraw (Yamamura/DeMello).

Item D-21: Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Leases to Bertil R.L. Werjefelt and Christina E.A. Werjefelt, Trustees of Living Trust of Bertil R.L. Werjefelt and Christina E.A. Werjefelt dated September 1, 1999, Valentine Peroff, Jr. and Barbara J. Peroff for Private Noncommercial Piers Purposes Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-21:10 and (1) 4-5-47:117.

Unanimously approved as submitted (Johns/Yamamura).

Item D-14: After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Limited and Hawaii Telcom, Inc. for Utility Purposes, Makawao, Maui, TMK: (2) 2-2-01:pors. 51and 68.

Member Johns recused himself

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item D-16: Grant of Perpetual, Non-Exclusive Easement to Maui Electric Company, Limited and Hawaiian Telcom, Inc. for Utility Purposes, Kahakuloa, Maui, TMK: (2) 3-1-01:por. 01.

Member Johns recused himself.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item D-5: Approval of Lease of Private Property with Mr. Leroy B. Faviola Jr. and Ms. Faviola Ridgway on behalf of the Department of Health, Clean Air Branch, for Air Monitoring Station Site at Keahialaka, Puna, Hawaii, TMK: (3) 1-3-28:por. 38.

The Board amended all reference to Leory B. Faviola Jr. be amended to Leroy Ridgeway Jr.

Unanimously approved as amended (DeMello/Johns).

Item D-1: Consent to Assign General Lease No. S-5036, Alan and Martha Drinan, Curtis and Bonnie Lofstedt, and Georgia Poppin as Executor for Nicholas Poppin Trust and Trustee for the Georgia Poppin Trust, Assignors, to Curtis and Bonnie Lofstedt and Georgia Poppin, as Trustee for Georgia Poppin Trust, Assignee, Lot 75, Kokee Camp Site Lots, Waimea, Kauai, TMK: (4) 1-4-04:69.

Item D-2: Cancellation of Revocable Permit No. S-7045, Shoichi Nagamine (deceased), Permittee, Hanapepe Rice & Kula Lots, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-03:06.

Item D-3: Issuance of Revocable Permit to Antone and Lorriane Reis, Lots 32 & 33, Wailua Rice and Kula Lots, Wailua, Lihue, Puna, Kauai, TMK: (4) 3-9-03:05 and 10.

Item D-4: Rescind Prior Board Action of July 7, 1998 (Item D-4), Consent to Assignment of General Lease No. S-5434, Hattie L.N. Santos to Virgin Huiuhuiwaina Headrick; Consent to Assign General Lease No. S-5434,

Hattie L.N. Santos, Assignor, to Stephen N. Santos, Assignee, Kikala and Keokea, Puna, Hawaii, TMK: (3) 1-2-43:34.

- Item D-7:** Consent to Assign General Lease No. 3165, Maverick M. B. Burns and Marie A. Ella, Assignor, to Roderick Q. Hickman and Gloria L. Colden-Hickman, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-07:31.
- Item D-8:** After-the-Fact Issuance of Revocable Permit to David Pellani for Intensive Agricultural Purposes, Kaapahu Homesteads, Hamakua, Hawaii, TMK: (3) 4-4-11:33.
- Item D-9:** Amend Prior Board Action of October 8, 2004 (Item D-6), Issuance of Direct Land License to United States Department of Transportation, Federal Highways Administration at Kaohe, IV, Hamakua, Hawaii, TMK: (3) 4-4-15: por. 08 and 4-4-16: por. 05.
- Item D-11:** Rescind Prior Board Action of March 11, 2005, **Item D-12:** Consent to Assignment and Mortgage of Land Office Deed No. 27709, Lanpar/HTL Associates, Assignor, to Waikoloa Land Lease, LLC, Assignee, Anaehoomalu, South Kohala, Hawaii, TMK: (3) 6-9-07:Portion of the Government Submerged Land of Waiulua Inlet.
- Item D-13:** Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28227, Assigned to Susan Graham, Hana, Maui, TMK: (2) 1-1-08:pors. 5 & 24.
- Item D-18:** Amendment to Prior Board Action of May 8, 1987, Agenda Item F-16, Direct Award of Perpetual, Non-Exclusive Easement for Utility Purposes, Honolulu, Oahu, TMK: 2-1-31:por. 10.
- Item D-19:** Rescind Prior Board Action of December 7, 1990, Item F-14, Grant of Non-Exclusive Easement for Rock Revetment Structure to Waialae Country Club, Waialae, Oahu, TMK: (1) 3-5-23:38.
- Item D-22:** Amend Prior Board Action of April 22, 1992 for a Grant of Non-Exclusive Easement for a Seawall to James F. Gregory at Kaneohe, Oahu, TMK: (1) 4-7-16:60 seaward.
- Item D-23:** Amend Prior Board Action of April 12, 2002, Item D-12; June 28, 2002, Item D-7; Establishment of a Natural Area Reserve and State Park Reserve, Kaena Point, Waialua, Oahu, TMK: (1) 6-9-02:01, 13 & 14.
- Item D-24:** Request to Extend Lease Contract No. DACA84-1-01-20, made on behalf of the United States of America, between the Secretary of the Army and the State of Hawaii, through its Department of Land and Natural

Resources, for its Division of State Parks, Situated at Makua, Waianae, Oahu, TMK: (1) 8-1-01:01, 02, 09, 10 and 8-2-01:02, 09, 10.

Item D-25: Amend Prior Board Action of April 1, 2005 (Agenda Item D-6), Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Protection of Endangered and Threatened Species Found in the Manana Valley Watershed, Honolulu, Oahu, TMK: (1) 9-7-25:02 & 9-7-26:02.

Unanimously approved as submitted (Johns/DeMello).

Item L-1: Approval for Award of Construction Contract – Job No. F75B646A, Parking Lot Resurfacing, Hapuna Beach State Recreation area (SRA) South Kohala, Hawaii.

Item L-2: Approval for Award of Construction Contract – Job No. B75XO71B Loading Dock Improvements, Waianae Small Boat Harbor, Oahu, Hawaii.

Item L-3: Appointment of Hamakua Soil and Water Conservation District Directors.

Unanimously approved as submitted (Johns/Yamamura).

Item F-1: Request for Approval to Amend/Extend a DLNR/RCUH Agreement (Contract No. 52850) for a Division of Aquatic Resources “Alien Invasive Species” Project (October 1, 2005 – June 30, 2007).

Item F-2: Request for Approval to Enter into an After-the-Fact Contract for Goods/Services with Hawaii Modular Space, Inc. for \$48,400 for a Mobile Office Trailer for the Division of Aquatic Resources, Kona District.

Unanimously approved as submitted (Johns/DeMello).

Item K-2: Enforcement File No. MA-05-66 Regarding Alleged Unauthorized Landscaping Action.

Mr. Lemmo briefed the Board and recommended the Board find the Berliners in violation of HRS, Chapter 183C and HAR, Chapter 13-5 and is subject to the seven conditions listed in staff's submittal.

Gerald Park representing the Berliners appeared before the Board. He pointed out his clients obtained the subject property in 2003 at which time it was already landscaped as it is today. At the time his client purchased the property as is, they did not know a conservation district use permit was required for the landscaping work. Mr. Park indicated he was able to view

aerial photographs of the area from 1972, which showed that the subject landscaping work was not present.

Unanimously approved as submitted (Yamamura/Johns).

Mr. Park asked the Board if his client would be able to maintain the property while they go through the Environmental Assessment process. The Board told Mr. Park his client is able to maintain the property but not to do additional landscaping.

There being no further business, Chairperson Young adjourned the meeting at 10:02 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources